

Angela Richards
RICHARDS LAW OFFICE
804 E. Pennsylvania Lane
Boise, ID 83706
Tel: (208) 345-8371
Fax: (208) 345-8371
ISB # 6695

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ESREF SACIROVIC,

Plaintiff,

v.

ALBERTO R. GONZALES, Attorney
General of the United States; MICHAEL
CHERTOFF, Secretary of the Department
of Homeland Security; EMILIO T.
GONZALEZ, Director, United States
Citizenship and Immigration Services;
ALAN PUCKETT, District Director of the
Helena District of the United States
Citizenship and Immigration Services,
Department of Homeland Security;
ROBERT MATHER, Officer in Charge of
the Boise Sub-office of the United States
Citizenship and Immigration Services,
Department of Homeland Security;
ROBERT MUELLER, Director of the
Federal Bureau of Investigation; UNITED
STATES DEPARTMENT OF JUSTICE;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES, FEDERAL
BUREAU OF INVESTIGATION,

Defendants.

Case No.

COMPLAINT FOR NATURALIZATION,
FREEDOM ON INFORMATION ACT
AND MANDAMUS

Agency Number: A075 164 275

1. This is a lawsuit brought by Esref Sacirovic, to obtain naturalization by this court pursuant to 8 U.S.C. §1447(b). This court has exclusive jurisdiction to make a determination on his applications, since it is more than 120 days since interview by United States Citizenship and Immigration Services. Plaintiff requests that the Court grant his naturalization applications, and give him his oath of citizenship. He meets all the statutory eligibility requirements for citizenship.

2. Plaintiff has requested a copy of his immigration files, as guaranteed by the Freedom of Information Act ("FOIA"). Plaintiff seeks to compel the disclosure and release of agency records improperly withheld from plaintiff by Defendants.

PARTIES

3. Plaintiff Esref Sacirovic came to the United States as a refugee from Bosnia on or about September 21, 1998. He resides in Boise, Idaho. He is a lawful permanent resident and is married to a naturalized U.S. citizen. They have two children, also naturalized U.S. citizens. He seeks an order granting him citizenship and also seeks the release of information requested on his behalf under the Freedom of Information Act.

4. Defendant Alberto Gonzales, Attorney General of the United States, has been conferred the authority to naturalize persons as citizens of the United States by INA § 310(a), 8 U.S.C. § 1421(a), and is sued here in his official capacity.

5. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (“DHS”). As of March 1, 2003, DHS is the agency responsible for implementing the Immigration and Nationality Act. Within DHS, the United States Citizenship and Immigration Services (“CIS”), formerly part of the Immigration and Naturalization Service, is now responsible for implementing the provisions under which lawful permanent residents can be naturalized and become United States citizens, in particular INA § 310, 8 U.S.C. § 1421, *et. seq.*¹ Respondent Chertoff is sued in his official capacity.

6. Defendant Emilio T. Gonzalez is Director of United States Citizenship and Immigration Services, a component of the Department of Homeland Security. USCIS is now responsible for implementing the provisions under which lawful permanent residents can be naturalized and become United States citizens, in particular INA § 310, 8 U.S.C. § 1421, *et. seq.* Respondent Emilio T. Gonzalez is sued in his official capacity.

7. Defendant Alan Puckett is the District Director of the Helena District of Citizenship and Immigration Services of the Department of Homeland Security, formerly the Immigration and Naturalization Service, and is sued here in his official capacity. Mr. Puckett has been delegated authority, under 8 C.F.R. §

¹ On March 1, 2003, the Immigration and Naturalization Service (“INS”) ceased to exist and its functions were transferred to the newly formed Department of Homeland Security. *See* Homeland Security Act, 116 Stat. 2135, Pub. L. 107-296 (2002). The former INS was divided into three separate agencies, Citizenship and Immigration Services, Immigration and Customs Enforcement, and Customs and Border Protection. This complaint challenges decisions of Citizenship and Immigration Services, the component responsible for adjudicating naturalization petitions.

310.2, to control all activities within the Helena District, including the authority to grant or deny naturalization applications.

8. Defendant Robert Mather is the Officer in Charge of the Boise Sub Office of the United States Citizenship and Immigration Services of the Department of Homeland Security.

9. Defendant Robert Mueller is the Director of the Federal Bureau of Investigation, the agency responsible to perform citizenship “name checks,” criminal history and other background checks for USCIS.

10. Department of Justice is the agency of the United States government that, under the direction of the Attorney General, has exclusive authority over naturalization of citizens.

11. Defendant Department of Homeland Security is the agency of the United States government that is responsible for implementing the citizenship provisions of the law.

12. Defendant United States Citizenship and Immigration Services (“CIS”) is the component of Homeland Security that is responsible to process the applications for citizenship of permanent residents.

13. Defendant Federal Bureau of Investigation is a unit of the Department of Justice and is responsible for completing name checks for naturalization applications.

JURISDICTION

14. This Court has jurisdiction pursuant to INA § 336(b), 8 U.S.C. § 1447(b) (jurisdiction for hearing on naturalization in certain cases of delay); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201, the Declaratory Judgment Act; 5 U.S.C. § 701, the Administrative Procedures Act; 5 U.S.C. § 552(a)(4)(B)(Freedom of Information Act), mandamus, 28 U.S.C. §1361; and 5 U.S.C. § 504, the Equal Access to Justice Act.

VENUE

15. Venue in the District of Idaho is appropriate pursuant to 8 U.S.C. § 1421(c) because Plaintiff reside within the district and the administrative decisions delaying Plaintiff' applications for naturalization were issued by the Boise Sub-Office of CIS, located within this district, and because the Freedom of Information Act requests were filed on behalf of Plaintiff while residing in this District..

STATEMENT OF THE FACTS

16. Plaintiff filed his N-400 naturalization applications with filing fees on or about September 7, 2004 with the Nebraska Service Center of the USCIS. He was fingerprinted by defendants shortly thereafter. On information and belief, the FBI completed a criminal records background check, as required by regulations, before USCIS noticed him to attend his citizenship interview. He attended an interview on his N-400 applications, on January 3, 2005 at the Boise USCIS Sub-office. He was told at the interview that he had passed the English

language, history and government tests, and that he had met the residence requirements and other eligibility requirements.

17. At the January 3, 2005 interview, he was also told that the sole reason he could not be given final approval and the oath of citizenship was that defendants had not yet been able to complete a “name check.”

18. Plaintiff meets all the eligibility requirements for naturalization. He has met the residence requirements, is of good moral character, is attached to the Constitution, and has passed the English, history and government tests. He has completed the FBI criminal background check; he has no criminal convictions.

19. Plaintiff inquired of defendants on or about July 5, 2005 about the status of his application, and was told that it was still pending for name checks. He inquired again on or about August 25, 2006, and was told that it was still pending for name checks.

20. Plaintiff needs approval of his applications because he wishes to vote and enjoy all the other rights and duties of citizens. He also wishes to be able to travel on a U.S. passport.

21. Since the date of interview, it has been over twenty-six months, or twenty-two months in excess of the 120-day statutory grace period, but USCIS has not made a decision on his application, nor has it informed plaintiff of any deficiency in his applications.

22. On or about January 19, 2007, Plaintiff submitted a Freedom of Information Act request to USCIS for “all paper and electronic records.” Other

than a letter acknowledging receipt, Mr. Sacirovic has received no other response to this request. To date, Defendants have not provided the records requested by Plaintiff, notwithstanding the Freedom of Information Act's requirement of an agency response within 10 working days. 8 C.F.R. § 103.10(c)(1). Defendants are unlawfully withholding agency records. Plaintiff has been and will continue to be irreparably harmed because of the unreasonable delay of Defendants in providing the information requested under the Freedom of Information Act.

23. Plaintiff has exhausted all administrative remedies that are available to him. Defendants have unlawfully withheld agency records in violation of the Freedom of Information Act.

24. The delay in responding to Plaintiff's Freedom of Information Act request is not attributable to Plaintiff.

24. The delay in responding to Plaintiff's Freedom of Information Act request is unreasonable in light of the regulatory requirement that a response be made within 10 working days. 8 C.F.R. § 103.10(c)(1).

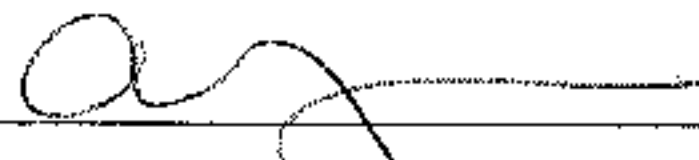
REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Direct that the FBI complete the pending name checks within 30 days;

3. If necessary, order that a hearing take place in the matter of his naturalization eligibility;
4. Review de novo and grant the naturalization application of Plaintiff, and give the Plaintiff his oath of citizenship.
5. Direct Defendants to promptly issue Certificates of Naturalization for Plaintiff.
6. Declare Defendants' have unlawfully withheld agency records in violation of the Freedom of Information Act to be unlawful;
5. Order Defendants to provide the information requested under the Freedom of Information Act within a reasonable period.
7. Award reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act, and Freedom of Information Act; and
8. Grant any and all further relief this Court deems just and proper.

Dated this 16th day of March, 2007.



Angela Richards, ISB 6695
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804 E. Pennsylvania Lane
Boise, ID 83706